

OCT. 7. 2002 2:49PM

858 792-6773 FOLEY AND LARDNER

NO. 2631 P. 1

**FOLEY & LARDNER**  
ATTORNEYS AT LAW

11250 EL CAMINO REAL, SUITE 200  
SAN DIEGO, CA 92130  
P.O. BOX 80278  
SAN DIEGO, CALIFORNIA 92138-0278  
TELEPHONE: 858.847.6700  
FACSIMILE: 858.792.6773  
WWW.FOLEYLARDNER.COM

**FACSIMILE TRANSMISSION**

**FAX RECEIVED**

OCT 09 2002

GROUP 1600

Total # of Pages 5 (including this page)

**OFFICIAL**

TO:	PHONE #:	FAX #:
Examiner Collins, Art Unit 1638 U.S. Patent and Trademark Office		703-746-5032

From : Barry S. Wilson
Date : October 7, 2002
Client/Matter No : 071344-0304
User ID No : 3067

TECH CENTER 1600/2900

NOV 19 2002

**RECEIVED**

**MESSAGE:**

Re: U.S. Patent Application Serial No.: 09/512,568  
Filed 2/24/00  
Title: TRANSGENIC PLANTS EXPRESSING ASSEMBLED SECRETORY  
ANTIBODIES  
Docket No.: EPI3007D 071344-0304 (formerly TSRI 184.2CON-3)

PLEASE SEE THE ATTACHED RESPONSE TO RESTRICTION REQUIREMENT FILING  
IN CONNECTION WITH THE ABOVE-REFERENCED PATENT APPLICATION.

If there are any problems with this transmission or if you have not  
received all of the pages, please call .

Operator:	Time Sent:	Return Original To: Deborah L. Wykes
-----------	------------	---

CONFIDENTIALITY NOTICE: THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS INTENDED ONLY FOR THE PERSONAL AND  
CONFIDENTIAL USE OF THE DESIGNATED RECIPIENTS NAMED ABOVE. THIS MESSAGE MAY BE AN ATTORNEY-CLIENT  
COMMUNICATION, AND AS SUCH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED  
RECIPIENT OR ANY AGENT RESPONSIBLE FOR DELIVERING IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT YOU  
HAVE RECEIVED THIS DOCUMENT IN ERROR, AND THAT ANY REVIEW, DISSEMINATION, DISTRIBUTION OR COPYING OF THIS MESSAGE  
IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY  
TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US BY MAIL. THANK YOU.

TECH CENTER 1000 2002

NOV 19 2002

RECEIVED

Atty. Dkt. No. EPI3007D (071344-0304)  
(Formerly TSRI 184.2CON-3)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Hein et al.

Title: TRANSGENIC PLANTS  
EXPRESSING ASSEMBLED  
SECRETORY ANTIBODIES

Appl. No.: 09/512,568

Filing Date: 02/24/2000

Examiner: Collins, Cynthia

Art Unit: 1638

<b>CERTIFICATE OF FACSIMILE TRANSMISSION</b>	
I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office, Washington, D.C. 20231, on the date below.	
<u>Deborah L. Wykes</u>	
(Printed Name)	
<u>Deborah L. Wykes</u>	
(Signature)	
<u>October 7, 2002</u>	
(Date of Deposit)	

**TRANSMITTAL FOR RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
Box NON-FEE AMENDMENT  
Washington, D.C. 20231

Sir:

Transmitted herewith is an amendment in the above-identified application.

- ☐ Small Entity status under 37 C.F.R. § 1.9 and § 1.27 has been established by a Small Entity statement previously submitted.
- ☐ Small Entity statement is enclosed.
- ☒ The fee required for additional claims is calculated below:

	Claims as Amended	Previously Paid For	Extra Claims Present	Rate	Additional Claims Fee
Total Claims:	58	62	0	x \$18.00	\$0.00
Independents:	2	3	0	x \$84.00	\$0.00
First presentation of any Multiple Dependent Claims:				+ \$280.00	\$0.00
CLAIMS FEE TOTAL:					\$0.00

- ☐ Applicant hereby petitions for an extension of time under 37 C.F.R. §1.136(a) for the total number of months checked below:

Atty. Dkt. No. EPI3007D (071344-0304)  
(Formerly TSRI 184.2CON-3)

<input type="checkbox"/>	Extension for response filed within the first month:	\$110.00	\$0.00
<input type="checkbox"/>	Extension for response filed within the second month:	\$400.00	\$0.00
<input type="checkbox"/>	Extension for response filed within the third month:	\$920.00	\$0.00
<input type="checkbox"/>	Extension for response filed within the fourth month:	\$1,440.00	\$0.00
<input type="checkbox"/>	Extension for response filed within the fifth month:	\$1,960.00	\$0.00
EXTENSION FEE TOTAL:			\$0.00
CLAIMS AND EXTENSION FEE TOTAL:			\$0.00
<input type="checkbox"/>	Small Entity Fees Apply (subtract ½ of above):		\$0.00
TOTAL FEE:			\$0.00

- ☐ Please charge Deposit Account No. 50-0872 in the amount of \$0.00. A duplicate copy of this transmittal is enclosed.
- ☐ A check in the amount of \$0.00 is enclosed.
- ☒ The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 50-0872. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-0872.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

Respectfully submitted,

Date October 7, 2002

By Barry S. Wilson

FOLEY & LARDNER  
Customer Number: 30542

Barry S. Wilson  
Attorney for Applicant  
Registration No. 39,431



30542

PATENT TRADEMARK OFFICE

Telephone: (858) 847-6722  
Facsimile: (858) 792-6773

#24/E/C  
12/4/02

Atty. Dkt. No. EPI3007D (071344-0304)  
(formerly TSRI 184.2CON-3)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Hein et al.

Title: TRANSGENIC PLANTS  
EXPRESSING ASSEMBLED  
SECRETORY ANTIBODIES

Appl. No.: 09/512,568

Filing Date: 02/24/2000

Examiner: Collins, Cynthia

Art Unit: 1638

<b>CERTIFICATE OF FACSIMILE TRANSMISSION</b> I hereby certify that this paper is being facsimile transmitted to the United States Patent and Trademark Office, Washington, D.C. 20231, on the date below.  <u>Deborah L. Wykes</u> (Printed Name)  <u>Deborah L. Wykes</u> (Signature)  <u>October 7, 2002</u> (Date of Deposit)
--

**RESPONSE TO RESTRICTION REQUIREMENT**

Commissioner for Patents  
Box NON-FEE AMENDMENT  
Washington, D.C. 20231

Sir:

In response to the restriction requirement set forth in the Office Action mailed September 10, 2002, Applicant hereby provisionally elects Group I, Claims 21, 24-40, 43, 50, 54-63 and 69-80, for examination with traverse.

The Examiner has required restriction between Group I, Claims 21, 24-40, 43, 50, 54-63 and 69-80, drawn to plant cells and Group II Claims 81-100, drawn to an immunoglobulin. Restriction was required because the Examiner believes that the groups are related as combination and subcombination, presumably referring to the cell claims as the former and the antibody claims as the latter. Restriction is alleged to be proper in this case because the subcombination has a separate utility from the combination. Applicant respectfully traverses the Restriction.

Restriction is appropriate if two or more independent and distinct inventions are claimed in one application. 35 U.S.C. §121. The Patent Office interprets §121 of the patent statute to allow restriction between two or more inventions only if they are able to support separate patents and they are either independent or distinct. MPEP § 803. The

Atty. Dkt. No. EPI3007D (071344-0304)  
(formerly TSRI 184.2CON-3)

examiner is required to provide reasons and/or examples to support restriction. *Id.* It is also Patent Office procedure that even if inventions are determined to be independent or distinct, restriction should not be made if examination can be performed without a "serious burden" on the examiner. *Id.*

It is respectfully submitted that the "serious burden" to search requirement cannot be met. This case claims priority to several applications filed in the Patent Office as far back as 1989. A good many searches have already been made and the same art continues to be asserted in the various cases. Patentability can be determined for both of the Groups without the need for yet an additional search and the attendant costs of divisional filings. Therefore, in view of the above, it is respectfully requested that the restriction requirement be withdrawn and that the Claims of Group I and II be examined together.

Respectfully submitted,

Date October 7, 2002

By Barry S. Wilson

FOLEY & LARDNER  
Customer Number: 30542



30542

PATENT TRADEMARK OFFICE

Telephone: (858) 847-6722  
Facsimile: (858) 792-6773

Barry S. Wilson  
Attorney for Applicant  
Registration No. 39,431